Pengarah Kastam dan Eksais Perak & Anor v Ting Meng Hwa

HIGH COURT (TAIPING) — CIVIL APPEAL NO 12B-10–01 OF 2012
AHMAD NASFY JC
9 APRIL 2013

Customs and Excise — Customs duties — Vehicle — Seizure of — Claim for short paid import duty — Vehicle ceased by first appellant — Respondent acquitted and discharged without her defence for offences under ss 133(1)(a) and 135(1)(d) of the Customs Act 1967 — Respondent claimed damages for depreciation value and loss of usage — Whether first appellant made mistake in initial process of classifying vehicle — Whether advertent error by Kedah Road Transport Department and Langkawi Custom's Department in classifying vehicle as 'window van' established — Whether respondent entitled for damages — Whether respondent estopped from claiming damages against appellant — Customs Act 1967 s 132

The respondent had, sometime in the year 1998, bought a vehicle bearing registration No SUKOM 1488. Prior to the said purchase, the Kedah Road Transport Department ('Kedah RTD') and the PUSPAKOM had examined the said vehicle and verified it as a 'window van'. Based on this verification, the respondent had paid an import duty of RM25,000 as assessed by the Langkawi Customs Department. The said vehicle was subsequently seized by the first appellant and the respondent was informed of the alleged offence under ss 133(1)(a) and 135(1)(d) of the Customs Act 1967 ('the Act'). The first appellant then offered the respondent a compound of RM5,000 and requested her to pay a further amount of RM44,858.15 as import duty of which the respondent refused. The respondent was charged in the magistrate court for the offence under the above stated provisions but was acquitted and discharged without her defence being called. The learned magistrate also made a direction for the said vehicle to be returned to the plaintiff. The respondent's cause of action was founded on unlawful seizure of the vehicle by the appellant which resulted in the depreciation of value of the said vehicle. The respondent claimed, inter alia, general damages for the depreciation of value of the said vehicle and the loss of usage. Prior to the hearing of this case, the appellants had filed an application to strike out the action on the grounds that it did not disclose any reasonable cause of action. The appellants relied on the following main grounds: (i) limitation period; (ii) failure of the respondent to name the specific officer that had detained the said vehicle; and (iii) that the seizure was made pursuant to s 132 of the Act and thus, the respondent was estopped from claiming the damages against the appellants. The application was allowed by the learned sessions judge. However, on appeal it was reversed by the High Court and the appellants did not appeal against the said decision. Hence, issues

(i) and (ii) above had been fully ventilated at the High Court on appeal and the remaining issues for the determination of this court were as follows: (a) whether the first appellant had made a mistake in the initial process of classifying of the said vehicle; and (b) whether the respondent could claim for damages.

Held, dismissing the appellants' appeal:

(1) The initial decision on the said vehicle as 'window van' by RTD and the Langkawi Customs Department still stands and remains valid. It would be plainly wrong to allow the first appellant to review the initial classification as the respondent had relied on the initial classification and had duly settled the import duty payable. In any event, the appellants were estopped from raising the above matter pursuant to ss 31 and 115 of the Evidence Act 1950. This was further fortified by the fact that the magistrate had acquitted and discharged the respondent without her defence been called under ss 133(1)(a) and 135(1)(d) of the Act and no appeal was filed against that decision. This would point out to the absence of culpability on the part of the respondent. The appellants had failed to show that there was advertent error on the part of the Kedah RTD and Langkawi Customs Department in classifying the said vehicle as a 'window van' (see paras 13–15).

(2) The seizure in the present case was made without any reasonable or probable cause by the first appellant's agent ie SD1. Thus, it follows therefore that s 132 of the Act was triggered and the respondent was therefore entitled for the payment of the vehicle value. In the present case, the said vehicle was valued at RM35,460.99. Hence, the respondent was entitled for the said value (see para 17).

[Bahasa Malaysia summary

Pada tahun 1998, responden telah membeli kenderaan yang mempunyai number pendaftaran SUKOM 1488. Sebelum pembelian tersebut, Jabatan Pengangkutan Jalanraya Kedah ('JPJ Kedah') dan PUSPAKOM telah memeriksa kenderaan tersebut dan mengesahkannya sebagai 'window van'. Berdasarkan pengesahan ini, responden telah membayar duti import sejumlah RM25,000 seperti yang ditaksir oleh Jabatan Kastam Langkawi. Kenderaan tersebut kemudiannya dirampas oleh perayu pertama dan responden telah diberitahu mengenai kesalahan yang didakwa di bawah ss 133(1)(a) dan 135(1)(d) Akta Kastam 1967 ('Akta'). Perayu pertama kemudiannya menawarkan responden kompaun sejumlah RM5,000 dan memintanya untuk membayar jumlah tambahan sebanyak RM44,858.15 sebagai duti import yang tidak dipersetujui oleh responden. Responden didakwa di mahkamah majistret untuk kesalahan di bawah peruntukan yang dinyatakan di atas tetapi dilepaskan dan dibebaskan tanpa pembelaannya dipanggil. Majistret yang bijaksana juga membuat arahan untuk kenderaan tersebut dikembalikan kepada plaintif. Kausa tindakan responden adalah berdasarkan rampasan salah

di sisi undang-undang ke atas kenderaan oleh perayu yang mengakibatkan susut nilai kenderaan tersebut. Responden mendakwa, antara lain, ganti rugi am untuk susut nilai dan kerugian penggunaan. Sebelum pendengaran kes ini, perayu-perayu telah memfailkan permohonan untuk membatalkan tindakan atas alasan bahawa ia tidak mengemukakan apa-apa kausa tindakan yang munasabah. Perayu-perayu bergantung ke atas alasan utama berikut: (i) tempoh had masa; (ii) kegagalan responden untuk menamakan pegawai spesifik yang menahan kenderaan tersebut; dan (iii) bahawa perampasan dibuat berikutan s 132 Akta dan oleh itu, responden diestop daripada menuntut ganti rugi terhadap perayu-perayu. Permohonan dibenarkan oleh hakim mahkamah sesyen yang bijaksana. Walau bagaimanapun atas rayuan ia diakas oleh Mahkamah Tinggi dan perayu-perayu tidak merayu terhadap keputusan tersebut. Maka, isu-isu (i) dan (ii) di atas telah disuarakan sepenuhnya di Mahkamah Tinggi atas rayuan dan isu-isu yang tinggal untuk penentuan mahkamah ini adalah seperti berikut: (a) sama ada perayu pertama telah membuat kesilapan di dalam proses permulaan mengklasifikasikan kenderaan tersebut: dan (b) sama ada responden boleh menuntut untuk ganti rugi.

Diputuskan, menolak rayuan perayu-perayu:

(1) Keputusan permulaan atas kenderaan tersebut adalah sebagai 'window van' oleh JPJ Kedah dan Jabatan Kastam Langkawi masih kukuh dan kekal sah. Jelas salah jika membenarkan perayu pertama menyemak semula klasifikasi permulaan memandangkan responden telah bergantung ke atas klasifikasi permulaan dan telah menyelesaikan duti import yang mesti dibayar. Walau bagaimanapun perayu-perayu diestop daripada membangkitkan perkara di atas tersebut berikutan ss 31 dan 115 Akta Keterangan 1950. Ini selanjutnya diperkukuhkan oleh fakta bahawa majistret telah melepaskan dan membebaskan responden tanpa pembelaannya dipanggil di bawah ss 133(1)(a) dan 135(1(d) Akta dan tiada rayuan difailkan terhadap keputusan tersebut. Ini akan mengarahkan kepada ketiadaan kebersalahan oleh pihak responden. Perayu-perayu telah gagal untuk menunjukkan bahawa terdapat kesilapan tidak memberi perhatian oleh pihak JPJ Kedah dan Jabatan Kastam Langkawi dalam mengklasifikasikan kenderaan tersebut sebagai 'window van' (lihat perenggan 13–15).

(2) Rampasan di dalam kes ini dibuat tanpa apa-apa sebab munasabah atau yang mungkin oleh ejen perayu pertama iaitu SD1. Oleh itu, s 132 Akta dibangkitkan dan responden berhak kepada bayaran nilai kenderaan. Dalam kes ini, kenderaan tersebut dinilaikan pada RM35,460.99. Maka, responden berhak kepada nilai tersebut (lihat perenggan 17).]

Cases referred to

Koperasi Kasuma (M) v Pengarah Tanah & Galian & Ors [1991] 3 CLJ Rep 44, HC (refd)

Pickard v Sears (1837) 6 Ad & El 469 (refd)
Public Textiles Berhad v Lembaga Letrik Negara [1976] 2 MLJ 58, FC (refd)

Legislation referred to

Customs Act 1967 ss 132, 133(1)(a), 135(1)(d)
Evidence Act 1950 ss 31, 115
Public Authorities Protection Act 1948 s 2(a)
Subordinate Courts Rules 1980 O 14 r 21(1)(a), (b), (d)

Azamudin (Federal Counsel, Royal Malaysian Customs Department) for the appellants.
Meor (Mahinderjit Meor & Assoc) for the respondent.

Ahmad Nasfy JC:

THE APPEAL

[1] This is an appeal by the appellant/defendants against the decision of the learned sessions judge given in Ipoh Sessions Court on 22 December 2011. In this judgment the parties will be referred to as they appear in the court below.

THE BRIEF FACTS

[2] Sometime in year 1998, the plaintiff has bought a vehicle bearing a registration number SUKOM 1488 with chasis No N30-1001688 through one Messrs Tenagawan Bersaudara Sdn Bhd in Terengganu.

[3] Prior to the said purchase, Kedah's RTD with PUSPAKOM have examined the said vehicle and verified as 'window van' ('exh P3'). Based on this verification, plaintiff had fill up Form 1 and paid an import duty of RM25,000 as assessed by the Langkawi's Custom ('exhs P4 and P11').

[4] Subsequently, the first defendant issued a 'Notis Rampasan' ('exh P5') against the said vehicle and seized the same together with its original registration card. The defendants then issued a letter dated 24 August 2000 informing the plaintiff about the alleged offence under ss 133(1)(a) and 135(1)(d) of the Customs Act 1967 ('the Act'). The first defendant then offered the plaintiff a compound of RM5,000 and requested her to pay a further amount of RM44,858.15 but she refused.

[5] The plaintiff was charged in Sri Manjung Magistrate Court for the offence under the above stated provisions. She was acquitted and discharged without her defence being called. The learned magistrate also made a direction for the said vehicle to be returned to the plaintiff.

[6] In consequence thereto, the plaintiff send a notice of demand dated 19 October 2000 vide her solicitor demanding the return of the said vehicle. The first defendant however did not reply to the said demand.

[7] In this case the plaintiff's cause of action is founded on unlawful seizure of the car by the defendant which resulting in the depreciation of value of the car. Thus the plaintiff claims the following reliefs:

(a) general damages for the depreciation value of the said vehicle;

(b) loss of usage since 25 February 2000–26 May 2008 @ RM200 per day; and

(c) 8% interest.

[8] Prior to the hearing of this case before the learned sessions judge, the defendants had filed an application pursuant to O 14 r 21(1)(a), (b) and (d) of the Subordinate Courts Rules 1980 to strike out the action on the grounds that it did not disclose any reasonable cause of action frivolous and vexatious and/or an abuse of the court process. In their affidavit of support, the defendants relied on the following main grounds:

(a) limitation has set in pursuant to s 2(a) of the Public Authorities Protection Act 1948 ('PAPA');

(b) the plaintiff failed to name the specific officer that had detained the said vehicle; and

(c) the seizure was made pursuant to s 132 of the Act. Hence no damages could be claim arising from the detention.

[9] The application was allowed by the learned sessions judge on 15 January 2010 ('encl 13'). However on appeal it was reversed by the learned High Court judge on 17 January 2011. There was no appeal by the defendants against the said decision. Hence the learned sessions judge ruled that for purposes of this trial, he would not consider anyone ((a)–(b)) of above issues, which approach I agree since the issues have been fully ventilated at the High Court on appeal. Thus it is my considered view that the same issues cannot be rehashed before the sessions judge. In any event the defendant is estopped from raising these issues in this present appeal as there was no appeal against the order by the learned High Court judge.

[10] In the circumstances, I am of the view that the remaining issues to be determined in this appeal are as follows: A

(a) whether the first defendant had made a mistake in the initial process of classifying of the said vehicle; and

(b) could the plaintiff claim for damages. B

FINDING OF COURT

C

Issue (a) — Whether the first defendant has made a mistake in initial classifying of the said vehicle

[11] In the present case, Road Transport Department of Kedah has classified the said vehicle as window van and the import duty has been paid by the plaintiff ('exhs P4 and P11') is compliance with the said classification.These pieces of evidence have never been challenged by the defendants. Thus the status of the said vehicle remained as a window van. D

E

[12] Despite having knowledge of the classification by the Road Transport Department it would appear that the first defendant detained the vehicle and requested for further assessment to be made against the said vehicle ('exhs D11 and D12'). A reply then came and stated that the said vehicle is a station wagon and subject to 170% import duty and 10% duty sales. A letter from Alor Setar's PUSPAKOM confirmed that there was a mistake in classifying the said vehicle as a van instead of a car ('exh P14'). F

[13] It is my considered view that, the initial decision on the said vehicle as window van by Kedah RTD and Custom of Pulau Langkawi still stands and remain valid. In my judgment it would be plainly wrong to allow the first defendant to review the initial classification as the plaintiff having relied on the initial classification had duly paid the import duty payable. In any event I hold that the defendants are estopped by the doctrine of estoppel which is entrenched in ss 31 and 115 of the Evidence Act 1950. In the case of *Public Textiles Berhad v Lembaga Letrik Negara* [1976] 2 MLJ 58 the then Federal Court referred to with approval the description of estoppel in the case of *Pickard v Sears* (1837) 6 Ad & El 469 at p 474: G H

> That, where one, by his words or conduct, willfully causes another to believe in the existence of a certain state of things, and induces him to act on that belief, or to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time. I

It is pertinent to state that Wan Yahya J sitting in the High Court Shah Alam in

the case of *Koperasi Kasuma (M) v Pengarah Tanah & Galian & Ors* [1991] 3 CLJ Rep 44 acknowledged that in appropriate circumstances estoppel may apply against the government. In my respectful view, given the facts of this appeal, this is an appropriate case where the doctrine of estoppel ought to apply.

[14] I am further fortified in the decision that I have arrived at above by the fact that the learned magistrate has acquitted and discharged the plaintiff without defence been called under ss 133(1)(a) and 135(1)(d) of the Act 1967. No appeal was filed against that decision. This would point out to the absence of culpability on the part of the plaintiff.

[15] Having given the record of appeal careful and minute consideration I find that the defendants have failed to show that there indeed that there was advertent error on the Kedah RTD and custom's department of Pulau Langkawi in classifying the said vehicle as a window van.

Issue (b) — Could the plaintiff claim for damages

[16] Learned federal counsel submitted that pursuant to s 132 of the Act, the plaintiff is estopped from claiming the damages against the defendant. Section 132 of the Act reads as follows:

> No person shall in any proceeding before any court in respect of the seizure of any goods seized in exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or any damages or other relief other than as order for the return of such goods or the payment of their value unless such seizure was made without reasonable or probable cause.

[17] In my view the submission is totally misconceived. As stated above I hold that the seizure in the present case was made without any reasonable or probable cause by the first defendant's agent ie SD1. Thus it follows therefore that s 132 of the Act is triggered and thus the plaintiff is entitled for the payment of the vehicle value. In the present case, the said vehicle was valued at RM35,460.99. Thus the plaintiff is entitled for that value.

THE CONCLUSION

[18] Based on the reasons adumbrated above, I find no merit in the appeal. Thus the defendants' appeal stands dismissed with no order as to costs.

Appellants' appeal dismissed.

Reported by Ashgar Ali Ali Mohamed